



**STATE OF MISSOURI  
OFFICE OF ADMINISTRATION  
DIVISION OF PURCHASING AND MATERIALS MANAGEMENT (DPMM)  
REQUEST FOR PROPOSAL**

**RFP NO. B3Z05029**

**TITLE: Legal Counsel Services – Washington, D.C.**

**ISSUE DATE: 09/16/04**

**REQ#: NR 419 30805000001**

**BUYER: Becky Brinkley**

**PHONE NO.: (573)751-5341**

**E-MAIL: becky.brinkley@oa.mo.gov**

**RETURN PROPOSAL NO LATER THAN: 10/04/04 AT 2:00 PM**

**MAILING INSTRUCTIONS:** Print or type **RFP Number** and **Return Due Date** on the lower left hand corner of the envelope or package. Proposals must be in DPMM office (301 W High St, Rm 630) by the return date and time.

**RETURN PROPOSAL TO:** DPMM or DPMM  
P O BOX 809 301 WEST HIGH ST, RM 630  
JEFFERSON CITY MO 65102-0809 JEFFERSON CITY MO 65101

**CONTRACT PERIOD: November 1, 2004 through October 31, 2005**

**DELIVER SUPPLIES/SERVICES FOB DESTINATION TO THE FOLLOWING ADDRESS:**

**Missouri Public Service Commission  
Truman Bldg., Room 840  
301 West High Street  
Jefferson City, MO 65101**

The offeror hereby declares understanding, agreement and certification of compliance to provide the items and/or services, at the prices quoted, in accordance with all requirements and specifications contained herein and the Terms and Conditions Request for Proposal (Revised 08/28/04). The offeror further agrees that the language of this RFP shall govern in the event of a conflict with his/her proposal. The offeror further agrees that upon receipt of an authorized purchase order from the Division of Purchasing and Materials Management or when this RFP is countersigned by an authorized official of the State of Missouri, a binding contract shall exist between the offeror and the State of Missouri.

**SIGNATURE REQUIRED**

AUTHORIZED SIGNATURE		DATE	
PRINTED NAME		TITLE	
COMPANY NAME			
MAILING ADDRESS			
CITY, STATE, ZIP			
FEDERAL EMPLOYER ID NO.		SOCIAL SECURITY NO. IF FEDERAL EMPLOYER ID NO. NOT APPLICABLE	
PHONE NO.	FAX NO.		E-MAIL ADDRESS

**NOTICE OF AWARD (STATE USE ONLY)**

ACCEPTED BY STATE OF MISSOURI AS FOLLOWS:			
CONTRACT NO.		VENDOR NO.	
BUYER		DATE	DIRECTOR

## **1. INTRODUCTION AND GENERAL INFORMATION**

### **1.1 Introduction:**

- 1.1.1 This document constitutes a request for competitive, sealed proposals for the provision of legal counsel services in Washington, D.C. as set forth herein.
- 1.1.2 Organization - This document, referred to as a Request for Proposal (RFP), is divided into the following parts:
  - 1) Introduction and General Information
  - 2) Contractual Requirements
  - 3) Proposal Submission Information
  - 4) Pricing Page(s)
  - 5) Exhibits A - D
  - 6) Terms and Conditions

### **1.2 Background Information:**

- 1.2.1 The Missouri General Assembly created the Public Service Commission (PSC) in 1913. The jurisdiction of the PSC extends to all investor-owned electric, natural gas, and telecommunications companies providing intrastate electric, natural gas, or telecommunications service at retail in the state of Missouri.
- 1.2.2 The PSC is comprised of five (5) Commissioners who are appointed by the Governor, with the advice and consent of the Missouri Senate, to staggered terms of six (6) years. The terms of no more than two (2) Commissioners expire in any one (1) year. The Governor designates one (1) member as the Chairman who serves in that capacity at the pleasure of the Governor. Historically, a majority of the Commissioners have been of the same political party as the Governor.
- 1.2.3 The PSC is served by a staff consisting of professional accountants, engineers, economists, attorneys, financial analysts, and management specialists. The staff participates as a party in cases filed before the PSC, however, the PSC, not the staff, intervenes in proceedings before Federal agencies. The PSC has intervened on numerous occasions in proceedings before Federal agencies, in particular the Federal Energy Regulatory Commission (FERC). Commissioners and staff of the PSC have testified before Federal agencies whose jurisdiction and actions impact the PSC and the utilities within the PSC's jurisdiction, and have, on occasion, testified before Congress. The PSC has increased its activities before these Federal agencies and its commitment of staff resources to them.
- 1.2.4 All natural gas sold at retail in the State of Missouri is under the jurisdiction of the PSC. Natural gas is transported by interstate pipelines at FERC approved rates and sold to the local distribution companies that the PSC regulates. Consequently, the retail price of natural gas sold under the PSC's jurisdiction is affected by the orders and decisions of the FERC. The following local distribution companies are under the jurisdiction of the PSC: Aquila Networks-MPS and Aquila Networks-L&P (divisions of Aquila Inc.); Atmos Energy-Associated, Atmos Energy-Greeley, and Atmos Energy-United Cities (divisions of Atmos Energy Corp.); Fidelity Natural Gas, Inc.; Laclede Gas Co.; Missouri Gas Energy (a division of Southern Union Co.); Southern Missouri Gas Co., L.C. (Tartan Energy Co., L.C.); and Union Electric Co. (d/b/a AmerenUE Gas Districts). The PSC also has jurisdiction respecting the transportation service of two intrastate pipelines, Missouri Gas Co. and Missouri Pipeline Co. (subsidiaries of Gateway Pipeline Company, Inc.).
- 1.2.5 Additionally, all electric companies under the PSC's jurisdiction are regulated by the FERC and/or purchase electricity for resale from electric companies whose rates are under the jurisdiction of the FERC. As a result, the policies that the PSC may be seeking to implement in regard to electric companies under its jurisdiction may be affected by the orders and decisions of the FERC. The

following electric companies are under the jurisdiction of the PSC: The Empire District Electric Co., Kansas City Power & Light Co., Aquila Networks-MPS and Aquila Networks-L&P (divisions of Aquila Inc.) and Union Electric Co. (d/b/a AmerenUE).

- 1.2.6 In addition to the FERC, there are other Federal agencies, such as the Environmental Protection Agency (EPA), the Securities and Exchange Commission (SEC), and the Nuclear Regulatory Commission (NRC), which impact the utility companies under the jurisdiction of the PSC. Also at the national level, Commissioners and staff of the PSC have served on nationwide advisory committees, committees such as the Acid Rain Advisory Committee (ARAC). At a regional level, the PSC is a member of the Organization of Midwest Independent System Operator (MISO) states and the Southwest Power Pool (SPP) Regional State Committee (RSC).
- 1.2.7 Since proposed legislation before, or to be sponsored in, Congress may have an impact on the jurisdiction of the PSC or the PSC's regulation of natural gas and electric companies within its jurisdiction, the PSC has submitted comments to the Missouri Congressional delegation and Congressional committees and subcommittees.
- 1.2.8 The PSC has appealed decisions of Federal agencies, or participated as an intervener or *amicus curiae* in appeals of decisions of Federal agencies.
- 1.2.9 The PSC is an active member of the National Association of Regulatory Utility Commissioners (NARUC). Although NARUC monitors and takes action respecting matters before the FERC, other Federal agencies, Federal courts, and Congress, it does so on behalf of a majority of its member commissions, not on behalf of any member state commission individually.
- 1.2.10 In recent years, the PSC has incurred in aggregate annual charges for legal counsel services in natural gas matters and in electric matters approximately as follows:

Fiscal Year	Natural Gas	Electric	Total
2000	\$262,594	\$6,737	\$269,331
2001	\$324,740	\$59,473	\$384,213
2002	\$141,607	\$33,754	\$175,361
2003	\$94,177	\$31,059	\$125,236

- 1.2.11 The PSC has maintained its level of activity before Federal agencies and Federal courts through the use of PSC personnel based in Jefferson City, MO (Commissioners, technical staff, and attorneys) and legal counsel based in the Washington, D.C. area. On certain Federal matters, the PSC relies solely on its own staff and does not utilize its legal counsel based in the Washington, D.C. area.
- 1.2.12 The PSC's use of legal counsel based in the Washington, D.C. area has fluctuated some in the last several years in correlation with the nature and number of proceedings taking place in Federal agencies and Federal courts on matters that directly or indirectly affect the PSC. In the past, the PSC has engaged in this activity through a commitment of Jefferson City, MO based PSC staff and legal counsel domiciled in the Washington, D.C. area.
- 1.2.13 The PSC relies on its Washington D.C. legal counsel to make some filings with Federal agencies and Federal courts located in Washington D.C. Occasionally, these filings are not finalized until the day that they must be filed.
- 1.2.14 The Missouri Public Service Commission has previously contracted for these services through C300109001 and C300109002 which expire October 31, 2004. A copy of the contracts can be viewed and printed from the Division of Purchasing and Materials Management's **Public Record Search and Retrieval System** located on the Internet at: <http://www.oa.mo.gov/purch/purch.htm>. In addition, all proposal and evaluation documentation leading to the award of the expiring contracts may also be

viewed and printed from the Division of Purchasing and Materials Management's **Public Record Search and Retrieval System**. Please reference the Bid number B3Z00109 or the contract numbers C300109001 and C300109002 when searching for these documents. **Offerors are hereby advised that the contractual requirements within this RFP may differ from the contractual requirements of the contracts referenced above.**

- 1.2.15 Although an attempt has been made to provide accurate and up-to-date information, the State of Missouri does not warrant or represent that the background information provided herein reflects all relationships or existing conditions related to this Request for Proposal.

## **2. CONTRACTUAL REQUIREMENTS**

### **2.1 General Requirements:**

- 2.1.1 The contractor shall provide either: (1) legal counsel services for natural gas issues, (2) legal counsel services for electric issues, or (3) legal counsel services for both natural gas and electric issues in Washington D.C. on an as needed, if needed basis for the State of Missouri, Public Service Commission (PSC) (hereinafter referred to as the "*state agency*") in accordance with the provisions and requirements stated herein and as stated in the notice of contract award.
- 2.1.2 The State of Missouri shall make no guarantee of a specific caseload or amount of work that may be required pursuant to the contract. However, the state agency estimates that approximately ninety percent (90%) of the services performed may require professional personnel, i.e., attorneys, and that the remaining ten percent (10%) of the services performed may require support personnel, i.e., paralegals, law clerks, secretaries, etc. Nonetheless, while there are performance criteria, there is no minimum personnel requirement.
- 2.1.3 The contractor shall perform services to the sole satisfaction of the state agency and pursuant to the approval, direction, and guidance of the General Counsel of the state agency, the General Counsel's designate, and/or designated members of the state agency's technical staff.
- 2.1.4 The contractor shall agree and understand that the contract shall not be construed as an exclusive arrangement and shall further agree that the State of Missouri may secure identical and/or similar services from other sources at any time in conjunction with or instead of the contractor's services.
- 2.1.5 The contractor shall agree and understand that in the event of multiple contract awards, the state agency shall determine on a case-by-case basis which contractor it shall utilize. That determination will be based, in part, on: 1) the expertise of the contractor(s), 2) the availability of the contractor(s), and 3) each contractor's quoted price.

### **2.2 Performance Requirements:**

- 2.2.1 The contractor shall provide legal counsel services for natural gas and/or electric issues as indicated below. Such services shall not be construed to include lobbying.
  - a. Appear on behalf of and represent the state agency before the Federal Energy Regulatory Commission (FERC) and other Federal agencies, as well as before Federal courts. Such appearances may include pursuing review of decisions made by these entities.
  - b. Be available to represent the interests of the state agency, to obtain information and to meet filing or submission deadlines established by the FERC, other Federal agencies, Federal courts and Congress.
  - c. Be available to represent the interests of the state agency before utility industry organizations such as regional electric reliability organizations or regional transmission organizations and before organizations composed of state regulatory bodies—organizations such as regional state committees.
  - d. Be available to substantively represent the interests of the state agency, in its fulfillment of its statutory responsibilities, before the Missouri Congressional delegation, Congress in general, and the Missouri General Assembly.
  - e. Intervene on behalf of the state agency in proceedings pending before the FERC, other Federal agencies, and/or Federal courts. The contractor must secure the specific prior approval of either the

General Counsel of the state agency or the General Counsel's designate before intervening on behalf of the state agency in any proceeding pending before the FERC, other Federal agencies, and/or Federal courts.

- f. File/submit pleadings/comments and/or attend hearings, prehearing conferences, conferences, or meetings on behalf of the state agency. The contractor must secure the specific prior approval of either the General Counsel of the state agency or the General Counsel's designate before filing/submitting any pleading/comments or attending any hearing, prehearing conference, conference or meeting on behalf of the state agency.
- g. Participate on behalf of the state agency in conference calls and work with other state commissions in developing and drafting pleadings and comments. In particular respecting electric issues and cases, the state agency has worked at times with other state regulatory bodies on matters pending before the FERC, utility industry organizations and organizations comprised of state regulatory bodies in the last five (5) years. Certain other state commissions also have Washington, D.C. area legal counsel, who may participate in these joint efforts.
- h. Annually, if requested, appear at the Jefferson City, MO offices of the state agency for a one-day presentation to the Commissioners and the staff respecting developments in the Federal agencies, Federal courts and Congress respecting Federal regulation of gas and electricity.
- i. Advise and/or assist the state agency in the state agency's efforts to perform the above tasks, including the preparation of legal memoranda and oral presentations to the Commissioners and staff of the state agency.
- j. The contractor shall agree and understand that requested services may include, without limitation, attending prehearing conferences, conferences and hearings (Congressional or otherwise); taking or attending depositions; engaging in and responding to discovery; working on testimony or comments with and serving as hearing room counsel to state agency witnesses; reviewing testimony of other parties; conducting cross-examination; monitoring proceedings; preparing or reviewing documents (e.g. memoranda of law, pleadings and comments); or merely submitting, filing or obtaining documents.

2.2.2 Unless otherwise specified herein, the contractor shall furnish all material, labor, facilities, equipment, and supplies necessary to perform the services required herein.

### **2.3 Conflict of Interest:**

2.3.1 The contractor shall ensure that there is no real or perceived conflict of interest at any time throughout the effective period of the contract.

- a. The contractor shall advise the General Counsel of the state agency if the contractor is sought to be retained or retained by any entity or person that may be or cause there to be a real or perceived conflict of interest.
- b. The contractor shall advise the General Counsel of the state agency if, in representing another client, the contractor provides legal counsel or is asked to provide legal counsel that may be or cause there to be a real or perceived conflict of interest.
- c. If the contractor has any reason to believe presently or subsequently that a conflict of interest may exist, the contractor shall immediately notify the General Counsel of the state agency of the situation.

2.3.2 The contractor shall agree and understand that the state agency shall make the final determination as to what constitutes a conflict of interest and that the decision of the state agency shall be final and without

recourse. The contractor shall further agree and understand that a determination by the state agency of the existence of a conflict of interest, either real or perceived, may be grounds for termination of the contract.

## **2.4 Unavailability:**

- 2.4.1 The contractor shall agree and understand that in the event the contractor has insufficient personnel or other resources to timely perform services pursuant to the contract, the contractor shall immediately contact the General Counsel of the state agency or the General Counsel's designate by the best means available and notify him/her of the contractor's inability to provide services in a timely manner. In such circumstances, the state agency shall have sole discretion in determining whether to obtain these services from another provider. Inability of the contractor to perform services due to insufficient personnel or other resources for an extended period may be grounds for the state agency to terminate the contract.

## **2.5 Invoicing and Payment Requirements:**

- 2.5.1 Immediately upon award of the contract, the contractor needs to submit or must have already submitted a properly completed State Vendor ACH/EFT Application, since the State of Missouri intends to make contract payments through Electronic Funds Transfer.
- a. If not already submitted, the contractor needs to obtain a copy of the State Vendor ACH/EFT Application and completion instructions from the Internet at:  
  
<http://www.oa.mo.gov/purch/vendorinfo/vendorach.pdf>
  - b. The contractor must submit a unique invoice number with each invoice submitted. The unique invoice number will be listed on the State of Missouri's EFT addendum record to enable the contractor to properly apply the state agency's payment to the invoice submitted.
- 2.5.2 Invoicing – The contractor shall submit itemized invoices on a calendar month basis to the Public Service Commission, Budget and Fiscal Services, P.O. Box 360, Jefferson City, MO 65102.
- a. The contractor's invoice must be grouped by case/matter and identify each of the following:
    - 1) The name and personnel classification of the individual who performed services (partner, associate, paralegal, clerical, etc.),
    - 2) The actual number of service hours that were provided by each individual by day along with a brief description of the tasks/work performed, and each reimbursable expense incurred.
  - b. The contractor shall not invoice the state agency for services provided by any other professional individuals and/or personnel classifications than those identified on the Pricing Page(s) of this document.
  - c. Additionally, the contractor's invoice must include the firm, fixed per hour price for each professional individual and/or the personnel classification in accordance with the appropriate firm, fixed per hour price specified on the Pricing Page of this document.
- 2.5.3 Payments - The contractor shall be paid in accordance with the applicable firm, fixed per hour price(s) stated on the Pricing Page(s) of this document for legal counsel services actually provided.
- a. Travel and Related Expenses - The contractor shall be reimbursed for actual and reasonable travel and travel related expenses pursuant to the Office of Administration Travel Regulations. The contractor shall invoice for actual and reasonable travel and travel related expenses pursuant to the Office of Administration Travel Regulations and Contiguous US Per Diem Rates (CONUS).

- 1) The contractor must have the prior written approval of the state agency for any such expenses. In addition, the contractor must have the prior approval of the state agency for any travel related expenses which may exceed the CONUS rates.
- 2) Effective 07/01/04, the mileage reimbursement rate is \$0.345 per mile.
- 3) The Office of Administration Travel Regulations can be found on the Internet by clicking on the Quick Link for Travel Regulations at the following address: <http://www.oa.mo.gov/acct/>
- 4) The Contiguous US Per Diem Rates (CONUS) can be found on the Internet at: <http://www.dtic.mil/perdiem/perdiemrates.html>

b. In addition to reimbursement for travel expenses, the contractor shall also be reimbursed for incidental expenses incurred in providing services specified herein. Such incidental expenses shall include 1) overnight courier service expenses made in the course of providing services, 2) facsimile machine transmission expenses made in the course of providing services, 3) long distance telephone calls made in the course of providing services, 4) copying costs for copies of documents obtained while providing services and 5) court reporter fees. The contractor shall support such expenses by submitting receipts.

2.5.4 The contractor shall **not** be paid for travel time.

2.5.5 Other than the payments and reimbursements specified above, no other payments or reimbursements shall be made to the contractor.

## **2.6 Other Contractual Requirements:**

2.6.1 Contract: A binding contract shall consist of: (1) the RFP, amendments thereto, and any Best and Final Offer (BAFO) request(s) with RFP changes/additions, (2) the contractor's proposal including any BAFOs and (3) the Division of Purchasing and Materials Management's acceptance of the proposal by "notice of award" or by "purchase order". All Exhibits and Attachments included in the RFP shall be incorporated into the contract by reference.

- a. The notice of award does not constitute a directive to proceed. Before providing equipment, supplies and/or services, the contractor must receive a properly authorized purchase order.
- b. The contract expresses the complete agreement of the parties and performance shall be governed solely by the specifications and requirements contained therein.
- c. Any change to the contract, whether by modification and/or supplementation, must be accomplished by a formal contract amendment signed and approved by and between the duly authorized representative of the contractor and the Division of Purchasing and Materials Management or by a modified purchase order prior to the effective date of such modification. The contractor expressly and explicitly understands and agrees that no other method and/or no other document, including correspondence from the state agency, acts, and oral communications by or from any person, shall be used or construed as an amendment or modification to the contract.

2.6.2 Contract Period - The original contract period shall be as stated in the Request for Proposal (RFP). The contract shall not bind, nor purport to bind, the state for any contractual commitment in excess of the original contract period. The Division of Purchasing and Materials Management shall have the right, at its sole option, to renew the contract for three (3) additional one-year periods, or any portion thereof. In the event the Division of Purchasing and Materials Management exercises such right, all terms and conditions, requirements and specifications of the contract, including prices, shall remain the same and apply during renewal periods.



- 2.6.3 Renewal Periods - If the option for renewal is exercised by the Division of Purchasing and Materials Management, the contractor shall agree that the prices for the renewal period shall not exceed the maximum price for the applicable renewal period stated on the Pricing Page of the contract.
- a. If renewal prices are not provided, then prices during renewal periods shall be the same as during the original contract period.
  - b. The Division of Purchasing and Materials Management does not automatically exercise its option for renewal based upon the maximum price and reserves the right to offer or to request renewal of the contract at a price less than the maximum price stated.
- 2.6.4 Termination - The Division of Purchasing and Materials Management reserves the right to terminate the contract at any time, for the convenience of the State of Missouri, without penalty or recourse, by giving written notice to the contractor at least thirty (30) calendar days prior to the effective date of such termination. The contractor shall be entitled to receive just and equitable compensation for services and/or supplies delivered to and accepted by the State of Missouri pursuant to the contract prior to the effective date of termination.
- 2.6.5 Transition - Upon expiration, termination, or cancellation of the contract, the contractor shall assist the state agency to insure an orderly transfer of responsibility and/or the continuity of those services required under the terms of the contract to an organization designated by the state agency, if requested in writing. The contractor shall provide and/or perform any or all of the following responsibilities:
- a. The contractor shall deliver, FOB destination, all records, documentation, reports, data, recommendations, or printing elements, etc., which were required to be produced under the terms of the contract to the state agency and/or to the state agency's designee within seven (7) days after receipt of the written request.
  - b. The contractor shall agree to continue providing any part or all of the services in accordance with the terms and conditions, requirements and specifications of the contract for a period not to exceed sixty (60) calendar days after the expiration, termination or cancellation date of the contract for a price not to exceed those prices set forth in the contract.
  - c. The contractor shall discontinue providing service or accepting new assignments under the terms of the contract, on the date specified by the state agency, in order to insure the completion of such service prior to the expiration of the contract.
- 2.6.6 Contractor Liability - The contractor shall be responsible for any and all personal injury (including death) or property damage as a result of the contractor's negligence involving any equipment or service provided under the terms and conditions, requirements and specifications of the contract. In addition, the contractor assumes the obligation to save the State of Missouri, including its agencies, employees, and assignees, from every expense, liability, or payment arising out of such negligent act. The contractor also agrees to hold the State of Missouri, including its agencies, employees, and assignees, harmless for any negligent act or omission committed by any subcontractor or other person employed by or under the supervision of the contractor under the terms of the contract.
- a. The contractor shall not be responsible for any injury or damage occurring as a result of any negligent act or omission committed by the State of Missouri, including its agencies, employees, and assignees.
  - b. Under no circumstances shall the contractor be liable for any of the following: (1) third party claims against the state for losses or damages (other than those listed above); (2) loss of, or damage to, the state's records or data; or (3) economic consequential damages (including lost profits or savings) or incidental damages, even if the contractor is informed of their possibility.

- 2.6.7 Insurance - The contractor shall understand and agree that the State of Missouri cannot save and hold harmless and/or indemnify the contractor or employees against any liability incurred or arising as a result of any activity of the contractor or any activity of the contractor's employees related to the contractor's performance under the contract. Therefore, the contractor must acquire and maintain adequate liability insurance in the form(s) and amount(s) sufficient to protect the State of Missouri, its agencies, its employees, its clients, and the general public against any such loss, damage and/or expense related to his/her performance under the contract.
- 2.6.8 Subcontractors - Any subcontracts for the products/services described herein must include appropriate provisions and contractual obligations to ensure the successful fulfillment of all contractual obligations agreed to by the contractor and the State of Missouri and to ensure that the State of Missouri is indemnified, saved, and held harmless from and against any and all claims of damage, loss, and cost (including attorney fees) of any kind related to a subcontract in those matters described in the contract between the State of Missouri and the contractor. The contractor shall expressly understand and agree that he/she shall assume and be solely responsible for all legal and financial responsibilities related to the execution of a subcontract. The contractor shall agree and understand that utilization of a subcontractor to provide any of the products/services in the contract shall in no way relieve the contractor of the responsibility for providing the products/services as described and set forth herein. The contractor must obtain the approval of the State of Missouri prior to establishing any new subcontracting arrangements and before changing any subcontractors. The approval shall not be arbitrarily withheld.
- 2.6.9 Substitution of Personnel - The contractor agrees and understands that the State of Missouri's agreement to the contract is predicated in part on the utilization of the specific individual(s) and/or personnel qualifications identified in the proposal. Therefore, the contractor agrees that no substitution of such specific individual(s) and/or personnel qualifications shall be made without the prior written approval of the state agency. The contractor further agrees that any substitution made pursuant to this paragraph must be equal or better than originally proposed and that the state agency's approval of a substitution shall not be construed as an acceptance of the substitution's performance potential. The State of Missouri agrees that an approval of a substitution will not be unreasonably withheld.
- 2.6.10 Contractor Status - The contractor represents himself or herself to be an independent contractor offering such services to the general public and shall not represent himself/herself or his/her employees to be an employee of the State of Missouri. Therefore, the contractor shall assume all legal and financial responsibility for taxes, FICA, employee fringe benefits, workers compensation, employee insurance, minimum wage requirements, overtime, etc., and agrees to indemnify, save, and hold the State of Missouri, its officers, agents, and employees, harmless from and against, any and all loss; cost (including attorney fees); and damage of any kind related to such matters.
- 2.6.11 Coordination - The contractor shall fully coordinate all contract activities with those activities of the state agency. As the work of the contractor progresses, advice and information on matters covered by the contract shall be made available by the contractor to the state agency or the Division of Purchasing and Materials Management throughout the effective period of the contract.
- 2.6.12 Property of State - All reports, documentation, and material developed or acquired by the contractor as a direct requirement specified in the contract shall become the property of the State of Missouri. The contractor shall agree and understand that all discussions with the contractor and all information gained by the contractor as a result of the contractor's performance under the contract shall be confidential and that no reports, documentation, or material prepared as required by the contract shall be released to the public without the prior written consent of the state agency.

### 3. PROPOSAL SUBMISSION INFORMATION

#### 3.1 Submission of Proposals:

- 3.1.1 ELECTRONIC SUBMISSION OF PROPOSALS THROUGH THE ON-LINE BIDDING WEB SITE IS NOT AVAILABLE FOR THIS RFP.
- 3.1.2 When submitting a proposal, the offeror should include five (5) additional copies along with their original proposal.
- a. Both the original and the copies should be printed on recycled paper and double sided. All proposals and copies should minimize or eliminate the use of non-recyclable materials such as plastic report covers, plastic dividers, vinyl sleeves, and binding.
  - b. Imaging Ready – In addition, all proposals are scanned into the Division of Purchasing and Materials Management imaging system after a contract is executed, or all proposals are rejected.
    - 1) The scanned information will be able to be viewed through the Internet from the Public Record Search system. Therefore, the offeror is advised not to include personal identifying information such as social security numbers in the proposal.
    - 2) In preparing a proposal, the offeror should be mindful of document preparation efforts for imaging purposes and storage capacity that will be required to image the proposals. Glue bound materials should not be used.
- 3.1.3 The offeror should clearly state on the cover page of the proposal whether their legal counsel service in Washington, D.C. will provide for (1) natural gas issues, (2) electric issues, or (3) both natural gas and electric issues.
- 3.1.4 To facilitate the evaluation process, the offeror is encouraged to organize their proposal into distinctive sections that correspond with the individual evaluation categories described herein. The offeror is cautioned that it is the offeror's sole responsibility to submit information related to the evaluation categories and that the State of Missouri is under no obligation to solicit such information if it is not included with the proposal. The offeror's failure to submit such information may cause an adverse impact on the evaluation of the proposal.
- a. Each distinctive section should be titled with each individual evaluation category and all material related to that category should be included therein.
  - b. The proposal should be page numbered.
  - c. The signed page one from the original RFP and all signed amendments should be placed at the beginning of the proposal.
- 3.1.5 The offeror should complete **Exhibit A**, Miscellaneous Information, to document: (1) if the offeror qualifies as either a nonprofit organization for the blind or a sheltered workshop, or if the offeror is proposing to include products and/or services manufactured, produced, or assembled by such an organization, and (2) whether the offeror and/or any of the owners of the offeror's organization are currently an employee of the State of Missouri, a member of the General Assembly, or a statewide elected official, and (3) the offeror's MBE/WBE status, if applicable.
- 3.1.6 The offeror should indicate within the offeror's proposal if the offeror will be utilizing the services of a MBE or WBE in the provision of services. The offeror should indicate the percentage of MBE/WBE participation and if such services will be provided through a subcontracting arrangement or through a joint venture.

### 3.1.7 Offeror's Contacts:

- a. Offerors and their agents (including subcontractors, employees, consultants, or anyone else acting on their behalf) must direct all of their questions or comments regarding the RFP, the evaluation, etc. to the buyer of record indicated on the first page of this RFP. The buyer may be contacted via e-mail or phone as shown on the first page, or via facsimile to 573-526-9817. The offeror may contact the Office of Equal Opportunity regarding MBE/WBE certification or subcontracting with MBE/WBE companies at (877) 259-2963 or (573) 751-8130 or by fax at (573) 522-8078.
- b. Offerors and their agents may not contact any other state employee regarding any of these matters during the solicitation and evaluation process. Inappropriate contacts are grounds for suspension and/or exclusion from specific procurements. Offerors and their agents who have questions regarding this matter should contact the buyer of record.
- c. Offerors are advised that any questions received less than ten calendar days prior to the RFP opening date may not be answered.

## 3.2 Competitive Negotiation of Proposals

3.2.1 The offeror is advised that under the provisions of this Request for Proposal, the Division of Purchasing and Materials Management reserves the right to conduct negotiations of the proposals received or to award a contract without negotiations. If such negotiations are conducted, the following conditions shall apply:

- a. Negotiations may be conducted in person, in writing, or by telephone.
- b. Negotiations will only be conducted with potentially acceptable proposals. The Division of Purchasing and Materials Management reserves the right to limit negotiations to those proposals which received the highest rankings during the initial evaluation phase. All offerors involved in the negotiation process will be invited to submit a best and final offer.
- c. Terms, conditions, prices, methodology, or other features of the offeror's proposal may be subject to negotiation and subsequent revision. As part of the negotiations, the offeror may be required to submit supporting financial, pricing and other data in order to allow a detailed evaluation of the feasibility, reasonableness, and acceptability of the proposal.
- d. The mandatory requirements of the Request for Proposal shall not be negotiable and shall remain unchanged unless the Division of Purchasing and Materials Management determines that a change in such requirements is in the best interest of the State of Missouri.

## 3.3 Evaluation and Award Process:

3.3.1 After determining that a proposal satisfies the mandatory requirements stated in the Request for Proposal, the evaluator(s) shall use both objective analysis and subjective judgment in conducting a comparative assessment of the proposal in accordance with the evaluation criteria stated below:

- a. Cost .....40 points
- b. Experience, Reliability and Expertise of Personnel .....45 points
- c. Method of Performance..... 15 points

3.3.2 After an initial screening process, a question and answer conference or interview may be conducted with the offeror, if deemed necessary by the Division of Purchasing and Materials Management. In addition, the offeror may be asked to make an oral presentation of their proposal during the conference.

Attendance cost at the conference shall be at the offeror's expense. All arrangements and scheduling shall be coordinated by the Division of Purchasing and Materials Management.

3.3.3 Separate evaluations shall be conducted as follows and awards made accordingly.

- a. Legal Counsel Services for Natural Gas issues;
- b. Legal Counsel Services for Electric issues;
- c. Legal Counsel Services for Both Natural Gas and Electric issues.

3.3.4 The State of Missouri reserves the right to make multiple awards.

3.3.5 Preference for Organizations for the Blind and Sheltered Workshops - Pursuant to RSMo 34.165, a five (5) bonus point preference shall be granted to offerors including products and/or services manufactured, produced or assembled by a qualified nonprofit organization for the blind established pursuant to 41 U.S.C. sections 46 to 48c or a sheltered workshop holding a certificate of approval from the Department of Elementary and Secondary Education pursuant to section 178.920 RSMo. Five bonus points will be added to the total evaluation points for offerors qualifying for the preference.

- a. If the offeror is an organization for the blind or sheltered workshop, the offeror should provide evidence of qualifications (i.e., copy of certificate or certificate number).
- b. If the offeror is utilizing an organization for the blind or a sheltered workshop as a subcontractor, the offeror should submit: (1) a letter of intent signed by the organization for the blind or sheltered workshop describing the products/services they will provide and indicating their commitment to aid the contractor's performance under the prospective state contract, and (2) evidence that the subcontractor qualifies as an organization for the blind or sheltered workshop.
- c. The two known organizations for the blind in the State of Missouri are Lighthouse for the Blind and Alpha Pointe. A list of Missouri sheltered workshops can be found at the following internet address:

<http://www.dese.mo.gov/divspeced/shelteredworkshops/swindex.html>

**3.4 Evaluation of Cost:**

3.4.1 The objective evaluation of cost shall be based upon the average hourly price for professional personnel for 270 hours annually and an average hourly price for support personnel for 30 hours annually.

3.4.2 Cost points shall be calculated based on the sum from the above calculation using the following formula:

$$\frac{\text{Lowest Responsive Price}}{\text{Compared Price}} \times 40 = \text{Cost score points}$$

3.4.3 The evaluation will include the original contract period plus renewal option periods.

3.4.4 The offeror shall agree and understand that the quantities used in the evaluation of cost are provided solely to document how cost will be evaluated. The State of Missouri makes no guarantee regarding the accuracy of the quantities stated nor does the State of Missouri intend to imply that the figures used for the cost evaluation in any way reflect actual nor anticipated usage.

**3.5 Evaluation of Offeror's Experience, Reliability, and Expertise of Personnel:**

3.5.1 Experience and reliability of the offeror's organization are considered subjectively in the evaluation process. Therefore, the offeror is advised to submit any information which documents successful and

reliable experience in past performances, especially those performances related to the requirements of this RFP.

- 3.5.2 The offeror should provide, on **Exhibit B** or in any other format, the following information related to previous and current services/contracts performed by the offeror's organization and any proposed subcontractors which are similar to the requirements of this RFP. In addition, the offeror should obtain the signature of the contact person referenced on the exhibit verifying that that information presented is accurate. The contact person's signature also represents that the contact person is willing and will be available for contact by the State of Missouri in order to discuss the services performed by the offeror for the contact person's company.
- Name, address, and telephone number of client/contracting agency and a representative of that client/agency who may be contacted for verification of all information submitted;
  - Dates of the service/contract; and
  - A brief, written description of the specific prior services performed and requirements thereof.
  - Any prior or current work that may be or cause there to be a real or perceived conflict of interest.
- 3.5.3 The offeror should submit a firm brochure, if such is available, which details the offeror's experience and reliability.
- 3.5.4 The offeror should submit examples from the last five (5) years of memoranda, pleadings, briefs and/or other work product submitted by the offeror in matters which are similar or identical to those described herein.
- 3.5.5 Business Compliance - The offeror must be in compliance with the laws regarding conducting business in the State of Missouri. The offeror certifies by signing the signature page of this original document and any amendment signature page(s) that the offeror and any proposed subcontractors are presently in compliance with such laws. The offeror shall provide documentation of compliance upon request by the Division of Purchasing and Materials Management. The compliance to conduct business in the state shall include, but not necessarily be limited to:
- Registration of business name (if applicable)
  - Certificate of authority to transact business/certificate of good standing (if applicable)
  - Taxes (e.g., city/county/state/federal)
  - State and local certifications (e.g., professions/occupations/activities)
  - Licenses and permits (e.g., city/county license, sales permits)
  - Insurance (e.g., worker's compensation/unemployment compensation)
- 3.5.6 The qualifications of the personnel proposed by the offeror to perform the requirements of this RFP, whether from the offeror's organization or from a proposed subcontractor, will be subjectively evaluated. Therefore, the offeror should submit detailed information related to the experience and qualifications, including education and training, of proposed personnel.
- The offeror may utilize **Exhibit C** for summarizing the personnel information and should submit detailed resumes for proposed key personnel.
    - Resumes should be structured to emphasize relevant qualifications and experience of the personnel in successfully completing contracts/performing services of a similar size and scope to the requirements of this RFP.
    - Information submitted should clearly identify previous experience in performing similar services and should include beginning and ending dates, a description of the role of the person in such performances, results of the services performed, and how the person's involvement in that project will relate to the person's ability to contribute to the State of Missouri.

- b. If personnel are not yet hired, the offeror should provide detailed descriptions of the required employment qualifications; and detailed job descriptions of the position to be filled, including the type of person proposed to be hired.

3.5.7 The offeror should submit a copy of all licenses and/or certifications related to the performance of the services required herein that are held by the personnel proposed to provide such services. If not submitted with the proposal, the State of Missouri reserves the right to request and obtain a copy of any license or certification required to perform the defined services prior to contract award.

### **3.6 Evaluation of Method of Performance:**

3.6.1 Proposals will be subjectively evaluated based on the offeror's distinctive plan for performing the requirements of the RFP. Therefore, the offeror should present a written narrative which demonstrates the method or manner in which the offeror proposes to satisfy these requirements. The language of the narrative should be straightforward and limited to facts, solutions to problems, and plans of action.

3.6.2 The method by which the proposed method of performance is written is left to the discretion of the offeror. The following method may be used:

On **Exhibit D**, or in any other appropriate format, identify each specific paragraph and subparagraph of the Contractual Requirements by paragraph number as an item for discussion. Immediately below the number, write a description of how, when, by whom, with what, to what degree, why, where, etc., the requirements will be satisfied and otherwise detail the offeror's understanding of the requirements and ability to successfully perform them.

3.6.3 In presenting the method of performance, the offeror should submit or describe the following:

- a. The offeror should identify how the offeror would address a real or perceived conflict of interest between or among clients; for example, how would the offeror determine which client or clients has/have priority.
- b. The offeror should include a concise summary of the major regulatory positions taken within the last five (5) years by clients of the offeror for which the offeror provided legal counsel services before relevant Federal agencies, Federal courts, Congress and/or other entities.
- c. The offeror, for activities sited in Washington, D.C., should state how the offeror would logistically accomplish (1) making a filing on the date of the filing deadline, (2) making appearances on short notice, and (3) participating in prehearings and hearings.
- d. Provide a description of the proposed services that will be performed and/or the proposed products that will be provided by Missourians and/or Missouri products.
- e. Provide a description of the economic impact returned to the State of Missouri through tax revenue obligations.
- f. Provide a description of the company's economic presence within the State of Missouri (e.g., type of facilities: sales offices; sales outlets; divisions; manufacturing; warehouse; other), including Missouri employee statistics.
- g. If any products and/or services offered under this RFP are being manufactured or performed at sites outside the continental United States, the offeror MUST disclose such fact and provide details with the proposal.

3.6.4 The offeror should provide an organizational chart showing the staffing and lines of authority for the key personnel to be used.

- a. It is recommended that two organizational charts be included. One organizational chart should outline the total organization and where the team proposed for this project fits into the total organization. The second chart should be an organizational chart outline the team proposed for this project.
- b. The organizational chart should include the following information:
  - 1) The relationship of service personnel to management and support personnel.
  - 2) The names of the personnel and the working titles of each.
  - 3) Any proposed subcontractors including management, supervisory, and other key personnel.
- c. Along with a detailed organizational chart, the offeror should describe the following:
  - 1) How services of the contract will be managed, controlled, and supervised in order to ensure satisfactory contract performance.
  - 2) Total Personnel Resources - The offeror should provide information that documents the depth of resources to ensure completion of all requirements on time and on target. If the offeror has other ongoing contracts that also require personnel resources, the offeror should document how sufficient resources will be provided to the State of Missouri.



**4. PRICING PAGE**  
(c/s 95549)

- 4.1** The offeror shall complete the following pricing table(s) for each service that the offeror is proposing to provide, by stating a firm, fixed price per hour for the original contract period and a maximum price per hour for each renewal option period for each attorney and for each non-attorney personnel classification. ***Offeror's are advised to review the payment and invoicing requirements before completing the pricing table(s) below.***

<b>Legal Counsel Services - Natural Gas Issues</b>					
<b>Attorney(s)</b>					
<b>Item No.</b>	<b>Name of Attorney</b>	<b>Original Contract Period, Firm, Fixed Price</b>	<b>1<sup>st</sup> Renewal Period, Maximum Price</b>	<b>2<sup>nd</sup> Renewal Period, Maximum Price</b>	<b>3<sup>rd</sup> Renewal Period, Maximum Price</b>
001		\$ _____ per hour	\$ _____ per hour	\$ _____ per hour	\$ _____ per hour
002		\$ _____ per hour	\$ _____ per hour	\$ _____ per hour	\$ _____ per hour
003		\$ _____ per hour	\$ _____ per hour	\$ _____ per hour	\$ _____ per hour
004		\$ _____ per hour	\$ _____ per hour	\$ _____ per hour	\$ _____ per hour
005		\$ _____ per hour	\$ _____ per hour	\$ _____ per hour	\$ _____ per hour
006		\$ _____ per hour	\$ _____ per hour	\$ _____ per hour	\$ _____ per hour
007		\$ _____ per hour	\$ _____ per hour	\$ _____ per hour	\$ _____ per hour
<b>Non-Attorney Personnel Classification</b>					
008		\$ _____ per hour	\$ _____ per hour	\$ _____ per hour	\$ _____ per hour
009		\$ _____ per hour	\$ _____ per hour	\$ _____ per hour	\$ _____ per hour
010		\$ _____ per hour	\$ _____ per hour	\$ _____ per hour	\$ _____ per hour
011		\$ _____ per hour	\$ _____ per hour	\$ _____ per hour	\$ _____ per hour
012		\$ _____ per hour	\$ _____ per hour	\$ _____ per hour	\$ _____ per hour
013		\$ _____ per hour	\$ _____ per hour	\$ _____ per hour	\$ _____ per hour

## PRICING PAGE, continued

<b>Legal Counsel Services - Electric Issues</b>					
<b>Attorney(s)</b>					
<b>Item No.</b>	<b>Name of Attorney</b>	<b>Original Contract Period, Firm, Fixed Price</b>	<b>1<sup>st</sup> Renewal Period, Maximum Price</b>	<b>2<sup>nd</sup> Renewal Period, Maximum Price</b>	<b>3<sup>rd</sup> Renewal Period, Maximum Price</b>
014		\$ _____ per hour	\$ _____ per hour	\$ _____ per hour	\$ _____ per hour
015		\$ _____ per hour	\$ _____ per hour	\$ _____ per hour	\$ _____ per hour
016		\$ _____ per hour	\$ _____ per hour	\$ _____ per hour	\$ _____ per hour
017		\$ _____ per hour	\$ _____ per hour	\$ _____ per hour	\$ _____ per hour
018		\$ _____ per hour	\$ _____ per hour	\$ _____ per hour	\$ _____ per hour
019		\$ _____ per hour	\$ _____ per hour	\$ _____ per hour	\$ _____ per hour
020		\$ _____ per hour	\$ _____ per hour	\$ _____ per hour	\$ _____ per hour
<b>Non-Attorney Personnel Classification</b>					
021		\$ _____ per hour	\$ _____ per hour	\$ _____ per hour	\$ _____ per hour
022		\$ _____ per hour	\$ _____ per hour	\$ _____ per hour	\$ _____ per hour
023		\$ _____ per hour	\$ _____ per hour	\$ _____ per hour	\$ _____ per hour
024		\$ _____ per hour	\$ _____ per hour	\$ _____ per hour	\$ _____ per hour
025		\$ _____ per hour	\$ _____ per hour	\$ _____ per hour	\$ _____ per hour
026		\$ _____ per hour	\$ _____ per hour	\$ _____ per hour	\$ _____ per hour

## PRICING PAGE, continued

<b>Legal Counsel Services - Natural Gas &amp; Electric Issues</b>					
<b>Attorney(s)</b>					
<b>Item No.</b>	<b>Name of Attorney</b>	<b>Original Contract Period, Firm, Fixed Price</b>	<b>1<sup>st</sup> Renewal Period, Maximum Price</b>	<b>2<sup>nd</sup> Renewal Period, Maximum Price</b>	<b>3<sup>rd</sup> Renewal Period, Maximum Price</b>
027		\$ _____ per hour	\$ _____ per hour	\$ _____ per hour	\$ _____ per hour
028		\$ _____ per hour	\$ _____ per hour	\$ _____ per hour	\$ _____ per hour
029		\$ _____ per hour	\$ _____ per hour	\$ _____ per hour	\$ _____ per hour
030		\$ _____ per hour	\$ _____ per hour	\$ _____ per hour	\$ _____ per hour
031		\$ _____ per hour	\$ _____ per hour	\$ _____ per hour	\$ _____ per hour
032		\$ _____ per hour	\$ _____ per hour	\$ _____ per hour	\$ _____ per hour
033		\$ _____ per hour	\$ _____ per hour	\$ _____ per hour	\$ _____ per hour
<b>Non-Attorney Personnel Classification</b>					
034		\$ _____ per hour	\$ _____ per hour	\$ _____ per hour	\$ _____ per hour
035		\$ _____ per hour	\$ _____ per hour	\$ _____ per hour	\$ _____ per hour
036		\$ _____ per hour	\$ _____ per hour	\$ _____ per hour	\$ _____ per hour
037		\$ _____ per hour	\$ _____ per hour	\$ _____ per hour	\$ _____ per hour
038		\$ _____ per hour	\$ _____ per hour	\$ _____ per hour	\$ _____ per hour
039		\$ _____ per hour	\$ _____ per hour	\$ _____ per hour	\$ _____ per hour

**EXHIBIT A****MISCELLANEOUS INFORMATION****Organizations for the Blind or Sheltered Workshop**

If the offeror qualifies as either a nonprofit organization for the blind or a sheltered workshop, or if the offeror is proposing to include products and/or services manufactured, produced, or assembled by such an organization, the offeror should identify the name of the organization in the space below and should attach all supporting documentation, as referenced elsewhere herein.

Name & Address of Organization for Blind/Sheltered Workshop:	_____
	_____

**Employee Bidding/Conflict of Interest**

Offerors who are employees of the State of Missouri, a member of the General Assembly or a statewide elected official must comply with Sections 105.450 to 105.458 RSMo regarding conflict of interest. If the offeror and/or any of the owners of the offeror's organization are currently an employee of the State of Missouri, a member of the General Assembly or a statewide elected official, please provide the following information.

Name of State Employee, General Assembly Member, or Statewide Elected Official:		
	In what office/agency are they employed?	
	Employment Title:	
Percentage of ownership interest in offeror's organization:		_____ %

**Offeror's MBE/WBE Status**

Executive Order 98-21 directs state agencies to increase the participation of certified minority business enterprises (MBE) and women business enterprises (WBE) in state procurements. MBE/WBE certification by the State of Missouri, Office of Administration, Office of Equal Opportunity (OEO) is required to be considered an eligible MBE/WBE in meeting participation goals.

If you qualify as a MBE or a WBE as defined in 37.020 RSMo, please mark the appropriate blank below.

_____	MBE
-------	-----

_____	WBE
-------	-----

_____	Both M & WBE
-------	--------------

To obtain an application for certification, go to the OEO Internet web site and download an application from: <http://www.oa.state.mo.us/oao/Application-profit.pdf> or contact the MBE/WBE Certification Program at 877-259-2963 or email [hevern@mail.oa.state.mo.us](mailto:hevern@mail.oa.state.mo.us)

**EXHIBIT B**  
**PRIOR EXPERIENCE OF OFFEROR**

The offeror should copy and complete this form for each reference being submitted as demonstration of the offeror and subcontractor's prior experience. In addition, the offeror is advised that if the contact person listed for the reference is unable to be reached during the evaluation, the listed experience may not be considered.

<b>Offeror/Subcontractor Name:</b>	
<b>Reference Information (Prior Services Performed For:)</b>	
Name of Reference Company:	
Address of Reference Company:	
Reference Contact Person Name:	
Contact Person Phone #	
Contact Person e-mail address:	
Dates of Prior Services:	
Dollar Value of Prior Services	
Description of Prior Services Performed	

*As the contact person for the reference provided above, my signature below verifies that the information presented on this form is accurate. I am available for contact by the State of Missouri for additional discussions regarding my/my company's association with the offeror referenced above:*

\_\_\_\_\_  
*Signature of Reference Contact Person*

\_\_\_\_\_  
*Date of Signature*

**EXHIBIT C**

**PERSONNEL EXPERTISE SUMMARY**  
**(Also attach resumes for key personnel)**

Personnel	Background and Expertise of Personnel
1. _____ (Name)	_____
_____	_____
_____	_____
2. _____ (Name)	_____
_____	_____
_____	_____
3. _____ (Name)	_____
_____	_____
_____	_____
4. _____ (Name)	_____
_____	_____
_____	_____
5. _____ (Name)	_____
_____	_____
_____	_____
6. _____ (Name)	_____
_____	_____
_____	_____
7. _____ (Name)	_____
_____	_____
_____	_____

**EXHIBIT D****METHOD OF PERFORMANCE**

The offeror may use this form, or any format desired, to present a written plan for performing the requirements specified in this Request for Proposal.

**STATE OF MISSOURI**  
**DIVISION OF PURCHASING AND MATERIALS MANAGEMENT**  
**TERMS AND CONDITIONS -- REQUEST FOR PROPOSAL**

## 1. TERMINOLOGY/DEFINITIONS

Whenever the following words and expressions appear in a Request for Proposal (RFP) document or any amendment thereto, the definition or meaning described below shall apply.

- a. **Agency and/or State Agency** means the statutory unit of state government in the State of Missouri for which the equipment, supplies, and/or services are being purchased by the **Division of Purchasing and Materials Management (DPMM)**. The agency is also responsible for payment.
- b. **Amendment** means a written, official modification to an RFP or to a contract.
- c. **Attachment** applies to all forms which are included with an RFP to incorporate any informational data or requirements related to the performance requirements and/or specifications.
- d. **Proposal Opening Date and Time** and similar expressions mean the exact deadline required by the RFP for the receipt of sealed proposals.
- e. **Offeror** means the person or organization that responds to an RFP by submitting a proposal with prices to provide the equipment, supplies, and/or services as required in the RFP document.
- f. **Buyer** means the procurement staff member of the DPMM. The **Contact Person** as referenced herein is usually the Buyer.
- g. **Contract** means a legal and binding agreement between two or more competent parties, for a consideration for the procurement of equipment, supplies, and/or services.
- h. **Contractor** means a person or organization who is a successful offeror as a result of an RFP and who enters into a contract.
- i. **Exhibit** applies to forms which are included with an RFP for the offeror to complete and submit with the sealed proposal prior to the specified opening date and time.
- j. **Request for Proposal (RFP)** means the solicitation document issued by the DPMM to potential offerors for the purchase of equipment, supplies, and/or services as described in the document. The definition includes these Terms and Conditions as well as all Pricing Pages, Exhibits, Attachments, and Amendments thereto.
- k. **May** means that a certain feature, component, or action is permissible, but not required.
- l. **Must** means that a certain feature, component, or action is a mandatory condition.
- m. **Pricing Page(s)** applies to the form(s) on which the offeror must state the price(s) applicable for the equipment, supplies, and/or services required in the RFP. The pricing pages must be completed and submitted by the offeror with the sealed proposal prior to the specified proposal opening date and time.
- n. **RSMo (Revised Statutes of Missouri)** refers to the body of laws enacted by the Legislature which govern the operations of all agencies of the State of Missouri. Chapter 34 of the statutes is the primary chapter governing the operations of DPMM.
- o. **Shall** has the same meaning as the word must.
- p. **Should** means that a certain feature, component and/or action is desirable but not mandatory.

## 2. APPLICABLE LAWS AND REGULATIONS

- a. The contract shall be construed according to the laws of the State of Missouri. The contractor shall comply with all local, state, and federal laws and regulations related to the performance of the contract to the extent that the same may be applicable.
- b. To the extent that a provision of the contract is contrary to the Constitution or laws of the State of Missouri or of the United States, the provisions shall be void and unenforceable. However, the balance of the contract shall remain in force between the parties unless terminated by consent of both the contractor and the DPMM.
- c. The contractor must be registered and maintain good standing with the Secretary of State of the State of Missouri and other regulatory agencies, as may be required by law or regulations.
- d. The contractor must timely file and pay all Missouri sales, withholding, corporate and any other required Missouri tax returns and taxes, including interest and additions to tax.
- e. The exclusive venue for any legal proceeding relating to or arising out of the RFP or resulting contract shall be in the Circuit Court of Cole County, Missouri.

## 3. OPEN COMPETITION/REQUEST FOR PROPOSAL DOCUMENT

- a. It shall be the offeror's responsibility to ask questions, request changes or clarification, or otherwise advise the DPMM if any language, specifications or requirements of an RFP appear to be ambiguous, contradictory, and/or arbitrary, or appear to inadvertently restrict or limit the requirements stated in the RFP to a single source. Any and all communication from offerors regarding specifications, requirements, competitive proposal process, etc., must be directed to the buyer from the DPMM, unless the RFP specifically refers the offeror to another contact. Such communication should be received at least ten calendar days prior to the official proposal opening date.
- b. Every attempt shall be made to ensure that the offeror receives an adequate and prompt response. However, in order to maintain a fair and equitable procurement process, all offerors will be advised, via the issuance of an amendment to the RFP, of any relevant or pertinent information related to the procurement. Therefore, offerors are advised that unless specified elsewhere in the RFP, any questions received less than ten calendar days prior to the RFP opening date may not be answered.
- c. Offerors are cautioned that the only official position of the State of Missouri is that which is issued by the DPMM in the RFP or an amendment thereto. No other means of communication, whether oral or written, shall be construed as a formal or official response or statement.
- d. The DPMM monitors all procurement activities to detect any possibility of deliberate restraint of competition, collusion among offerors, price-fixing by offerors, or any other anticompetitive conduct by offerors which appears to violate state and federal antitrust laws. Any suspected violation shall be referred to the Missouri Attorney General's Office for appropriate action.
- e. The RFP is available for viewing and downloading on the state's On-Line Bidding website. Registered vendors are electronically notified or mailed the RFP based on the information maintained in the State of Missouri's vendor database. If any portion of the address is incorrect, the offeror must notify the buyer in writing or update the address themselves on the state's On-Line Bidding website.
- f. The DPMM reserves the right to officially amend or cancel an RFP after issuance.

## 4. PREPARATION OF PROPOSALS

- a. Offerors **must** examine the entire RFP carefully. Failure to do so shall be at offeror's risk.
- b. Unless otherwise specifically stated in the RFP, all specifications and requirements constitute minimum requirements. All proposals must meet or exceed the stated specifications and requirements.
- c. Unless otherwise specifically stated in the RFP, any manufacturer names, trade names, brand names, information and/or catalog numbers listed in a specification and/or requirement are for informational purposes only and are not intended to limit competition. The offeror may offer any brand which meets or exceeds the specification for any item, but must state the manufacturer's name and model number for any such brands in the proposal. In addition, the offeror shall explain, in



detail, (1) the reasons why the proposed equivalent meets or exceeds the specifications and/or requirements and (2) why the proposed equivalent should not be considered an exception thereto. Proposals which do not comply with the requirements and specifications are subject to rejection without clarification.

- d. Proposals lacking any indication of intent to offer an alternate brand or to take an exception shall be received and considered in complete compliance with the specifications and requirements as listed in the RFP.
- e. In the event that the offeror is an agency of state government or other such political subdivision which is prohibited by law or court decision from complying with certain provisions of an RFP, such an offeror may submit a proposal which contains a list of statutory limitations and identification of those prohibitive clauses which will be modified via a clarification conference between the DPMM and the offeror, if such offeror is selected for contract award. The clarification conference will be conducted in order to agree to language that reflects the intent and compliance of such law and/or court order and the RFP. Any such offeror needs to include in the proposal, a complete list of statutory references and citations for each provision of the RFP which is affected by this paragraph.
- f. All equipment and supplies offered in a proposal must be new, of current production, and available for marketing by the manufacturer unless the RFP clearly specifies that used, reconditioned, or remanufactured equipment and supplies may be offered.
- g. Prices shall include all packing, handling and shipping charges FOB destination, freight prepaid and allowed unless otherwise specified in the RFP.
- h. Prices offered shall remain valid for 90 days from proposal opening unless otherwise indicated. If the proposal is accepted, prices shall be firm for the specified contract period.
- i. Any foreign offeror not having an Employer Identification Number assigned by the United States Internal Revenue Service (IRS) must submit a completed IRS Form W-8 prior to or with the submission of their proposal in order to be considered for award.

## 5. SUBMISSION OF PROPOSALS

- a. Proposals may be submitted by delivery of a hard copy to the DPMM office. Electronic submission of proposals through the State of Missouri's On-Line Bidding website is not available unless stipulated in the RFP. Delivered proposals must be sealed in an envelope or container, and received in the DPMM office located at 301 West High St, Rm 630 in Jefferson City, MO no later than the exact opening time and date specified in the RFP. All proposals must (1) be submitted by a duly authorized representative of the offeror's organization, (2) contain all information required by the RFP, and (3) be priced as required. Hard copy proposals may be mailed to the DPMM post office box address. However, it shall be the responsibility of the offeror to ensure their proposal is in the DPMM office (address listed above) no later than the exact opening time and date specified in the RFP.
- b. The sealed envelope or container containing a proposal should be clearly marked on the outside with (1) the official RFP number and (2) the official opening date and time. Different proposals should not be placed in the same envelope, although copies of the same proposal may be placed in the same envelope.
- c. A proposal submitted electronically may be modified on-line prior to the official opening date and time. A proposal which has been delivered to the DPMM office, may be modified by signed, written notice which has been received by the DPMM prior to the official opening date and time specified. A proposal may also be modified in person by the offeror or its authorized representative, provided proper identification is presented before the official opening date and time. Telephone or telegraphic requests to modify a proposal shall not be honored.
- d. A proposal submitted electronically may be canceled on-line prior to the official opening date and time. A proposal which has been delivered to the DPMM office, may only be withdrawn by a signed, written notice or facsimile which has been received by the DPMM prior to the official opening date and time specified. A proposal may also be withdrawn in person by the offeror or its authorized representative, provided proper identification is presented before the official opening date and time. Telephone or telegraphic requests to withdraw a proposal shall not be honored.
- e. When submitting a proposal electronically, the offeror indicates acceptance of all RFP terms and conditions by clicking on the "Submit" button on the Electronic Bid Response Entry form. Offerors delivering a hard copy proposal to DPMM must sign and return the RFP cover page or, if applicable, the cover page of the last amendment thereto in order to constitute acceptance by the offeror of all RFP terms and conditions. Failure to do so may result in rejection of the proposal unless the offeror's full compliance with those documents is indicated elsewhere within the offeror's response.

## 6. PROPOSAL OPENING

- a. Proposal openings are public on the opening date and at the opening time specified on the RFP document. Only the names of the respondents shall be read at the proposal opening and posted on the state's On-Line Bidding website. The contents of the responses shall not be disclosed at this time.
- b. Proposals which are not received in the DPMM office prior to the official opening date and time shall be considered late, regardless of the degree of lateness, and normally will not be opened. Late proposals may only be opened under extraordinary circumstances in accordance with 1 CSR 40-1.050.

## 7. PREFERENCES

- a. In the evaluation of proposals, preferences shall be applied in accordance with Chapter 34 RSMo. Contractors should apply the same preferences in selecting subcontractors.
- b. By virtue of statutory authority, a preference will be given to materials, products, supplies, provisions and all other articles produced, manufactured, made or grown within the State of Missouri and to all firms, corporations or individuals doing business as Missouri firms, corporations or individuals. Such preference shall be given when quality is equal or better and delivered price is the same or less.
- c. In accordance with Executive Order 98-21, contractors are encouraged and may be required per the RFP to utilize certified minority and women-owned businesses in selecting subcontractors.

## 8. EVALUATION/AWARD

- a. Any clerical error, apparent on its face, may be corrected by the buyer before contract award. Upon discovering an apparent clerical error, the buyer shall contact the offeror and request clarification of the intended proposal. The correction shall be incorporated in the notice of award. Examples of apparent clerical errors are: 1) misplacement of a decimal point; and 2) obvious mistake in designation of unit.
- b. Any pricing information submitted by an offeror shall be subject to evaluation if deemed by the DPMM to be in the best interest of the State of Missouri.
- c. The offeror is encouraged to propose price discounts for prompt payment or propose other price discounts that would benefit the State of Missouri. However, unless otherwise specified in the RFP, pricing shall be evaluated at the maximum potential financial liability to the State of Missouri.
- d. Awards shall be made to the offeror whose proposal (1) complies with all mandatory specifications and requirements of the RFP and (2) is the lowest and best proposal, considering price, responsibility of the offeror, and all other evaluation criteria specified in the RFP and any subsequent negotiations and (3) complies with Sections 34.010 and 34.070 RSMo and Executive Order 04-09.
- e. In the event all offerors fail to meet the same mandatory requirement in an RFP, DPMM reserves the right, at its sole discretion, to waive that requirement for all offerors and to proceed with the evaluation. In addition, the DPMM reserves the right to waive any minor irregularity or technicality found in any individual proposal.
- f. The DPMM reserves the right to reject any and all proposals.
- g. When evaluating a proposal, the State of Missouri reserves the right to consider relevant information and fact, whether gained from a proposal, from an offeror, from offeror's references, or from any other source.
- h. Any information submitted with the proposal, regardless of the format or placement of such information, may be considered in making decisions related to the responsiveness and merit of a proposal and the award of a contract.
- i. Negotiations may be conducted with those offerors who submit potentially acceptable proposals. Proposal revisions may be permitted for the purpose of obtaining best and final offers. In conducting negotiations, there shall be no disclosure of any information submitted by competing offerors.
- j. Any award of a contract shall be made by notification from the DPMM to the successful offeror. The DPMM reserves the right to make awards by item, group of items, or on an all or none basis. The grouping of items awarded shall be determined by DPMM based upon factors such as item similarity, location, administrative efficiency, or other considerations in the best interest of the State of Missouri.
- k. Pursuant to Section 610.021 RSMo, proposals and related documents shall not be available for public review until after a contract is executed or all proposals are rejected.

- l. The DPMM posts all proposal results on the On-line Bidding website for a reasonable period after proposal award and maintains images of all proposal file material for review. Offerors who include an email address with their proposal will be notified of the award results via email.
  - m. The DPMM reserves the right to request clarification of any portion of the offeror's response in order to verify the intent of the offeror. The offeror is cautioned, however, that its response may be subject to acceptance or rejection without further clarification.
- Any proposal award protest must be received within ten (10) calendar days after the date of award in accordance with the requirements of 1 CSR 40-1.050 (10).
- o. The final determination of contract(s) award shall be made by DPMM.

## 9. CONTRACT/PURCHASE ORDER

- a. By submitting a proposal, the offeror agrees to furnish any and all equipment, supplies and/or services specified in the RFP, at the prices quoted, pursuant to all requirements and specifications contained therein.
- b. A binding contract shall consist of: (1) the RFP, amendments thereto, and/or Best and Final Offer (BAFO) request(s) with RFP changes/additions, (2) the contractor's proposal including the contractor's BAFO, and (3) DPMM's acceptance of the proposal by "notice of award" or by "purchase order."
- c. A notice of award does not constitute an authorization for shipment of equipment or supplies or a directive to proceed with services. Before providing equipment, supplies and/or services, the contractor must receive a properly authorized purchase order.
- d. The contract expresses the complete agreement of the parties and performance shall be governed solely by the specifications and requirements contained therein. Any change, whether by modification and/or supplementation, must be accomplished by a formal contract amendment signed and approved by and between the duly authorized representative of the contractor and the DPMM or by a modified purchase order prior to the effective date of such modification. The contractor expressly and explicitly understands and agrees that no other method and/or no other document, including correspondence, acts, and oral communications by or from any person, shall be used or construed as an amendment or modification.

## 10. INVOICING AND PAYMENT

- a. The State of Missouri does not pay state or federal taxes unless otherwise required under law or regulation.
- b. The statewide financial management system has been designed to capture certain receipt and payment information. Therefore, each invoice submitted must reference the purchase order number and must be itemized in accordance with items listed on the purchase order. Failure to comply with this requirement may delay processing of invoices for payment.
- c. The contractor shall not transfer any interest in the contract, whether by assignment or otherwise, without the prior written consent of the DPMM.
- d. Payment for all equipment, supplies, and/or services required herein shall be made in arrears unless otherwise indicated in the RFP.
- e. The State of Missouri assumes no obligation for equipment, supplies, and/or services shipped or provided in excess of the quantity ordered. Any unauthorized quantity is subject to the state's rejection and shall be returned at the contractor's expense.
- f. All invoices for equipment, supplies, and/or services purchased by the State of Missouri shall be subject to late payment charges as provided in Section 34.055 RSMo.

## 11. DELIVERY

Time is of the essence. Deliveries of equipment, supplies, and/or services must be made no later than the time stated in the contract or within a reasonable period of time, if a specific time is not stated.

## 12. INSPECTION AND ACCEPTANCE

- a. No equipment, supplies, and/or services received by an agency of the state pursuant to a contract shall be deemed accepted until the agency has had reasonable opportunity to inspect said equipment, supplies, and/or services.
- b. All equipment, supplies, and/or services which do not comply with the specifications and/or requirements or which are otherwise unacceptable or defective may be rejected. In addition, all equipment, supplies, and/or services which are discovered to be defective or which do not conform to any warranty of the contractor upon inspection (or at any later time if the defects contained were not reasonably ascertainable upon the initial inspection) may be rejected.
- c. The State of Missouri reserves the right to return any such rejected shipment at the contractor's expense for full credit or replacement and to specify a reasonable date by which replacements must be received.
- d. The State of Missouri's right to reject any unacceptable equipment, supplies, and/or services shall not exclude any other legal, equitable or contractual remedies the state may have.

## 13. WARRANTY

- a. The contractor expressly warrants that all equipment, supplies, and/or services provided shall: (1) conform to each and every specification, drawing, sample or other description which was furnished to or adopted by the DPMM, (2) be fit and sufficient for the purpose expressed in the RFP, (3) be merchantable, (4) be of good materials and workmanship, and (5) be free from defect.
- b. Such warranty shall survive delivery and shall not be deemed waived either by reason of the state's acceptance of or payment for said equipment, supplies, and/or services.

## 14. CONFLICT OF INTEREST

- a. Officials and employees of the state agency, its governing body, or any other public officials of the State of Missouri must comply with Sections 105.452 and 105.454 RSMo regarding conflict of interest.
- b. The contractor hereby covenants that at the time of the submission of the proposal the contractor has no other contractual relationships which would create any actual or perceived conflict of interest. The contractor further agrees that during the term of the contract neither the contractor nor any of its employees shall acquire any other contractual relationships which create such a conflict.

## 15. REMEDIES AND RIGHTS

- a. No provision in the contract shall be construed, expressly or implied, as a waiver by the State of Missouri of any existing or future right and/or remedy available by law in the event of any claim by the State of Missouri of the contractor's default or breach of contract.
- b. The contractor agrees and understands that the contract shall constitute an assignment by the contractor to the State of Missouri of all rights, title and interest in and to all causes of action that the contractor may have under the antitrust laws of the United States or the State of Missouri for which causes of action have accrued or will accrue as the result of or in relation to the particular equipment, supplies, and/or services purchased or procured by the contractor in the fulfillment of the contract with the State of Missouri.

## 16. CANCELLATION OF CONTRACT

- a. In the event of material breach of the contractual obligations by the contractor, the DPMM may cancel the contract. At its sole discretion, the DPMM may give the contractor an opportunity to cure the breach or to explain how the breach will be cured. The actual cure must be completed within no more than 10 working days from notification, or at a minimum the contractor must provide DPMM within 10 working days from notification a written plan detailing how the contractor intends to cure the breach.
- b. If the contractor fails to cure the breach or if circumstances demand immediate action, the DPMM will issue a notice of cancellation terminating the contract immediately.
- c. If the DPMM cancels the contract for breach, the DPMM reserves the right to obtain the equipment, supplies, and/or services to be provided pursuant to the contract from other sources and upon such terms and in such manner as the DPMM deems appropriate and charge the contractor for any additional costs incurred thereby.
- d. The contractor understands and agrees that funds required to fund the contract must be appropriated by the General Assembly of the State of Missouri for each fiscal year included within the contract period. The contract shall not be binding upon the state for any period in which funds have not been appropriated, and the state shall not be liable for any costs associated with termination caused by lack of appropriations.

## 17. COMMUNICATIONS AND NOTICES

Any notice to the contractor shall be deemed sufficient when deposited in the United States mail postage prepaid, transmitted by facsimile, transmitted by e-mail or hand-carried and presented to an authorized employee of the contractor.

## 18. BANKRUPTCY OR INSOLVENCY

- a. Upon filing for any bankruptcy or insolvency proceeding by or against the contractor, whether voluntary or involuntary, or upon the appointment of a receiver, trustee, or assignee for the benefit of creditors, the contractor must notify the DPMM immediately.
- b. Upon learning of any such actions, the DPMM reserves the right, at its sole discretion, to either cancel the contract or affirm the contract and hold the contractor responsible for damages.

## 19. INVENTIONS, PATENTS AND COPYRIGHTS

The contractor shall defend, protect, and hold harmless the State of Missouri, its officers, agents, and employees against all suits of law or in equity resulting from patent and copyright infringement concerning the contractor's performance or products produced under the terms of the contract.

## 20. NON-DISCRIMINATION AND AFFIRMATIVE ACTION

In connection with the furnishing of equipment, supplies, and/or services under the contract, the contractor and all subcontractors shall agree not to discriminate against recipients of services or employees or applicants for employment on the basis of race, color, religion, national origin, sex, age, disability, or veteran status. If the contractor or subcontractor employs at least 50 persons, they shall have and maintain an affirmative action program which shall include:

- a. A written policy statement committing the organization to affirmative action and assigning management responsibilities and procedures for evaluation and dissemination;
- b. The identification of a person designated to handle affirmative action;
- c. The establishment of non-discriminatory selection standards, objective measures to analyze recruitment, an upward mobility system, a wage and salary structure, and standards applicable to layoff, recall, discharge, demotion, and discipline;
- d. The exclusion of discrimination from all collective bargaining agreements; and
- e. Performance of an internal audit of the reporting system to monitor execution and to provide for future planning.

If discrimination by a contractor is found to exist, the DPMM shall take appropriate enforcement action which may include, but not necessarily be limited to, cancellation of the contract, suspension, or debarment by the DPMM until corrective action by the contractor is made and ensured, and referral to the Attorney General's Office, whichever enforcement action may be deemed most appropriate.

## 21. AMERICANS WITH DISABILITIES ACT

In connection with the furnishing of equipment, supplies, and/or services under the contract, the contractor and all subcontractors shall comply with all applicable requirements and provisions of the Americans with Disabilities Act (ADA).

## 22. FILING AND PAYMENT OF TAXES

The commissioner of administration and other agencies to which the state purchasing law applies shall not contract for goods or services with a vendor if the vendor or an affiliate of the vendor makes sales at retail of tangible personal property or for the purpose of storage, use, or consumption in this state but fails to collect and properly pay the tax as provided in chapter 144, RSMo. For the purposes of this section, "affiliate of the vendor" shall mean any person or entity that is controlled by or is under common control with the vendor, whether through stock ownership or otherwise. Therefore offeror's failure to maintain compliance with chapter 144, RSMo may eliminate their proposal from consideration for award.

## 23. TITLES

Titles of paragraphs used herein are for the purpose of facilitating reference only and shall not be construed to infer a contractual construction of language.